

**WRITTEN TESTIMONY OF
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CONNECTICUT COMMISSION ON UNIFORM LAWS**

In Support of Raised H.B. No. 6628, An Act Adopting the Revised Uniform Arbitration Act

Connecticut General Assembly
Judiciary Committee
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Senator McDonald, Representative Lawlor and Members of the Judiciary Committee, thank you for the opportunity to submit written testimony in support of Raised H.B. No. 6628, An Act Adopting the Revised Uniform Arbitration Act.

THE REVISED UNIFORM ARBITRATION ACT (RUAA)

Why Revise the Original Uniform Arbitration Act (UAA)?

The original Uniform Arbitration Act (UAA) was approved in 1955 by the National Uniform Law Commissioners (ULC). It was a bare bones Act that is now outdated. Today, arbitration is a vital alternative to litigation, chosen by numerous parties to resolve disputes in many areas of the law. More than ever before, Connecticut needs to update and revise the UAA in light of the increased use of arbitration, the greater complexity of the disputes submitted to arbitration, and the need to resolve ambiguities, fill in gaps and codify the developing case law over the past 50 years. Whether or not one favors arbitration, it is clear that many parties have chosen this alternative and it is critical to provide such parties with a clear, balanced and reasonable set of guidelines to govern its conduct.

RUAA Provisions Which Are Not Covered By the Original UAA

Determining Arbitrability: The Revised Uniform Arbitration Act (RUAA) resolves the confusion over who decides arbitrability and by what criteria. The rationale of this RUAA provision providing for the arbitrator to make this initial decision was relied on heavily by the U.S. Supreme Court in an important arbitration case. *See Howsam v Dean Witter Reynolds, Inc.* 537 U.S. 79 (2002).

Provisional Remedies: Occasions arise where a restraining order, attachment or other provisional remedy is necessary in an arbitration in order to maintain the status quo in the proceeding and make it possible for the ultimate award to be effective. RUAA provides for this.

Consolidation: In situations where separate arbitrations involve the same transactions or parties, RUAA establishes a way to consolidate the arbitrations if no one is prejudiced so that unnecessary time and expense are reduced for the parties.

Arbitrator Disclosure of Conflicts: RUAA strengthens the fairness and impartiality of the proceeding by requiring arbitrators to disclose known financial interests or personal relationships that could affect impartiality of the arbitrator. If a neutral arbitrator fails to disclose a known material interest or relationship it may be used to establish "evident partiality" which is a ground for which the Court could vacate such an unjust result.

Arbitrator Immunity: The willingness of highly qualified individuals to serve as arbitrators is enhanced by RUAA provisions which grant immunity to arbitrators from being sued by parties, similar to the immunity currently provided to judges

Obtaining Necessary Evidence: RUAA recognizes that parties to arbitrations sometimes need to obtain important evidence for their positions on issues. RUAA addresses this need by allowing a limited form of discovery. All discovery is controlled by the arbitrator. The arbitrator decides the extent

of the discovery based on demonstrated need while taking in to account the desirability of making the proceeding fair, expeditious, and cost effective.

Pre-hearing Conferences: RUAA expressly authorizes the parties and the arbitrator to confer in advance of the actual hearing. Pre-hearing conferences can be beneficial in terms of the efficiency and cost effectiveness of the arbitration process. For example, issues can be clarified, facts can be stipulated, documents can be exchanged and witnesses can be identified.

Addressing Punitive Damages: First, it must be clearly understood that current case law (and not RUAA) makes punitive damages already available in an arbitration, if such damages would be available in a civil court action for the same type of claim. RUAA wisely guards against an improper exercise of punitive damages awards by statutorily requiring that the arbitrator state in writing the basis in fact and in law if punitive damages are made a part of the award. Failure of the arbitrator to so state, or if erroneously stated, can result in the award being vacated for exceeding the arbitrator's authority.

Initiating Arbitration: The UAA is silent on how to initiate arbitration. RUAA fills this gap by setting forth the steps for initiating the arbitration and giving notice to adverse parties.

Electronic Records: RUAA is drafted to allow for the validation and use of electronic records, contracts and signatures consistent with the computer age and appropriate federal law.

Party Autonomy : The UAA does not state whether any of its provisions may be varied or waived by the parties in their agreement to arbitrate. This results in a loss of party autonomy because of this uncertainty and the implication that all of the provisions are mandatory. RUAA preserves party autonomy and corrects this problem by expressly specifying which provisions may be varied or waived by agreement thus allowing the parties to shape an arbitration agreement to meet their needs. Most of the RUAA provisions may be varied or waived. However, in order to protect parties with lesser bargaining power, certain basic provisions may not be waived such as the right to an attorney, and rights to confirm, vacate , modify or enforce an award.

RUAA Only Applies When There Is An Agreement to Arbitrate: Because RUAA only applies only where there is an agreement to arbitrate, arbitrations prescribed and required by state statute are not covered by RUAA. Thus, statutory labor arbitrations and lemon law arbitrations, and other such statutory arbitrations are not covered.

The Doctrine of Federal Preemption: Under federal preemption, the Federal Arbitration Act (FAA) governs all arbitration agreements involving interstate commerce. Interstate commerce is defined so broadly that there is almost everything in the commercial world that is covered. The FAA provides that arbitration agreements shall be valid, irrevocable and enforceable except for grounds recognized by law for the revocation of a contract. This has been construed by the United States Supreme Court to mean that an arbitration agreement cannot be singled out for invalidation or restriction by a state statute except for grounds that exist for invalidation or restriction for all other types of contracts. In the case of consumer contracts containing an arbitration agreement as a contract of adhesion, this means that the arbitration agreement cannot be singled out for separate treatment in a state statute except for grounds under the contract law applying to all types of agreements. Case law is very consistent on this point. For example, the U.S. Supreme Court preempted and struck down a state statute which required that a "[n]otice that a contract is subject to arbitration...shall be typed in underlined capital letters on the first page of the contract" See Doctor's Associates v. Casarotto, 116 S.Ct. 1652 (1996). Therefore , RUAA is unable to include special provisions or carve outs pertaining only to consumer or other special interest groups. Because of federal preemption such tinkering or fine tuning can only be done by congressional amendment of the Federal Arbitration Act (FAA). Presently, 2 bills are before Congress (HR 1020 and HR 991) to amend the FAA to include the special provisions advocated by consumer groups.

Conclusion: RUAA was carefully drafted in a lengthy and balanced deliberative process open to all interested parties. The Connecticut Commissioners have compromised the following provisions to satisfy special interests, namely making RUAA apply only prospectively to future arbitration agreements, and to

only allow those remedies in an award which could be granted by a court. RUAA has received the support and endorsement of many preeminent legal and arbitration organizations appearing on the attached list. In 2008, RUAA received joint favorable approval from this Judiciary Committee. The clear need for RUAA in Connecticut has not changed and we respectfully request your favorable action at this time.

Respectfully submitted,
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